

Nos. 2014-1411, -1442

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**In the United States Court of Appeals  
for the Federal Circuit**

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CEPHALON, INC. AND ACUSPHERE, INC.,  
PLAINTIFFS-APPELLANTS

*v.*

ABRAXIS BIOSCIENCE, LLC. AND CELGENE CORP.,  
DEFENDANTS-CROSS-APPELLANTS,

ABRAXIS BIOSCIENCE, INC.,  
DEFENDANT

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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
MASSACHUSETTS, NO. 11-CV-12226, HON. RICHARD G. STEARNS, PRESIDING*

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**UNOPPOSED MOTION TO EXTEND TIME FOR FILING  
PLAINTIFFS-APPELLANTS' OPENING BRIEF**

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Pursuant to Fed. R. App. P. 26(b) and Fed. Cir. R. 26(b), Plaintiffs-Appellants Cephalon Inc. and Acusphere, Inc. (“Plaintiffs”), by counsel, respectfully request that the Court extend the time within which Plaintiffs must file their Opening Brief.

1. Plaintiffs’ Opening Brief is currently due on June 23, 2014.
2. Plaintiffs seek to extend the deadline for filing that Brief by fourteen days, to July 7, 2014.
3. This is Plaintiffs’ first request for an extension.
4. Defendants Celgene Corp. and Abraxis Bioscience, LLC (“Defendants”) have filed an improper cross-appeal which Plaintiffs have moved to dismiss. Plaintiffs’ reply in support of that motion to dismiss is due on June 16, 2014.
5. Pending the Court’s decision on Plaintiffs’ motion to dismiss Defendants’ improper cross-appeal, briefing cannot proceed past Plaintiffs’ Opening Brief.
6. Briefing the motion to dismiss has required time and resources that would otherwise have been devoted to the preparation of Plaintiffs’ Opening Brief.
7. Defendants do not oppose this extension.

8. As there is good cause for the requested extension, Plaintiffs respectfully request that it be granted.

9. This motion is not made for purposes of delay, but in good faith in light of the reasons set forth above.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this unopposed motion for modification of the briefing schedule. For the Court's convenience, a proposed order is attached.

Dated: June 13, 2014

Respectfully submitted,

/s/ William P. Ferranti

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*Cephalon, Inc. and Acusphere, Inc.*

## CERTIFICATE OF INTEREST

Pursuant to Circuit Rule 47.4, undersigned counsel for Plaintiffs-Appellants Cephalon, Inc. and Acusphere, Inc. certifies the following:

1. The full name of every party or amicus represented by us is:

Cephalon, Inc. and Acusphere, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by us is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10% or more of the stock of any party represented by us are:

Cephalon, Inc. is wholly owned by Cupric Holding Co., Inc., which is wholly owned by Teva Pharmaceutical Industries Ltd. No publicly held corporation owns more than 10% of Teva Pharmaceutical Industries Ltd.'s stock. Acusphere, Inc. does not have any parent corporations and no publicly traded company owns more than 10% of its stock.

4. The names of all law firms and the partners or associates that appeared for the parties now represented by us in the trial court or expected to appear in this court are:

Winston & Strawn LLP (George C. Lombardi, Christopher B. Essig, Julia M. Johnson, William P. Ferranti, John. R. McNair); Goodwin Procter LLP (John T. Bennett, Nicholas K. Mitrokostas).

Dated: June 13, 2014

/s/ William P. Ferranti

WILLIAM P. FERRANTI

*Counsel for Plaintiffs-Appellants  
Cephalon, Inc. and Acusphere, Inc.*

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**ORDER**

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Upon consideration of Plaintiffs' Unopposed Motion to Extend  
Time for Filing Plaintiffs-Appellants' Opening Brief,

IT IS HEREBY ORDERED THAT:

1. The unopposed motion is granted.
2. Appellants' Brief is to be filed on or before July 7, 2014.

Dated: \_\_\_\_\_, 2014

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of June, 2014, I caused the foregoing Plaintiffs–Appellants’ Motion To Dismiss Cross-Appeal to be filed via CM/ECF with the Clerk of the Court, thereby electronically serving it on all counsel of record in this matter.

Dated: June 13, 2014

/s/ William P. Ferranti

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